

SENATE BILL No. 328

DIGEST OF INTRODUCED BILL

Citations Affected: IC 23-4-1.

Synopsis: Revised Uniform Partnership Act. Changes the Indiana Uniform Partnership Act to conform to the Revised Uniform Partnership Act. Provides for partnership administration and partnership property ownership rights, including conveyance procedures. Makes changes to the liability and fiduciary duty of a partnership and the partners. Provides for the dissolution and conversion of partnerships and for the merger of partnerships and limited partnerships. Makes certain other changes and conforming amendments. Repeals superseded statutes.

Effective: July 1, 2004.

Simpson

January 12, 2004, read first time and referred to Committee on Judiciary.

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Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

SENATE BILL No. 328

A BILL FOR AN ACT to amend the Indiana Code concerning commercial law.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 23-4-1-2 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2004]: Sec. 2. **The following definitions apply**
3 in this chapter:

4 **(a)** "Court" includes every court and judge having jurisdiction in
5 the case.

6 **(b)** "Business" includes every trade, occupation, or profession.

7 **(c)** "Person" includes individuals, partnerships, limited liability
8 companies, corporations, and other associations.

9 ~~"Bankrupt" includes bankrupt under federal bankruptcy laws or~~
10 ~~insolvent under any state insolvent statute.~~

11 **(d)** "Conveyance" includes every assignment, lease, mortgage, or
12 encumbrance.

13 **(e)** "Debtor in bankruptcy" means a person who is the subject
14 of an order for relief under Title 11 U.S.C., a comparable
15 order under a successor statute of general application, or a
16 comparable order under federal, state, or foreign law
17 governing insolvency.



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(f) "Distribution" means a transfer of money or other property from a partnership to a partner or the partner's transferee in the partner's capacity as a partner.

(g) "Foreign limited liability partnership" means a limited liability partnership formed under an agreement governed by the laws of a jurisdiction other than Indiana and registered under the laws of the jurisdiction.

(h) "Limited liability partnership" means a partnership formed under an agreement governed by the laws of this state, registered under and complying with sections 45 through 52 of this chapter, and having a name that contains the words "Limited Liability Partnership" or the abbreviation "L.L.P." or "LLP" as the last words or letters of its name.

(i) "Partnership agreement" means the written, oral, or implied agreement among the partners concerning the partnership and includes amendments to the partnership agreement.

(j) "Property" means all real, personal, or mixed property that is tangible or intangible or an interest in such property.

(k) "Real property" includes land and any interest or estate in land.

(l) "Statement" means a statement of:

- (1) partnership authority, under section 19.7 of this chapter;**
- (2) denial, under section 19.9 of this chapter;**
- (3) dissociation, under section 59 of this chapter;**
- (4) dissolution, under section 65 of this chapter; or**
- (5) merger, under section 74 of this chapter;**

or an amendment or cancellation of any of the foregoing.

SECTION 2. IC 23-4-1-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 3. (1) A person has "knowledge" of a fact within the meaning of this chapter not only when ~~he~~ **the person** has actual knowledge thereof, but also when ~~he~~ **the person** has knowledge of such other facts as in the circumstances shows bad faith.

(2) A person has "notice" of a fact within the meaning of this chapter ~~when the person who claims the benefit of the notice: if the person:~~

- ~~(a) states the fact to such person; or~~
- (a) is told the fact by the person who claims benefit of the notice;**
- ~~(b) delivers~~ **receives** through the mail, or by other means of communication, a written statement of the fact to such person or

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to a proper person at his place of business or residence
notification of the fact; or

(c) has reason to know it exists from all of the facts known to
the person at the time in question.

(3) A person receives a notification when the notification:

(a) comes to the person's attention; or

(b) is delivered at the person's place of business or other place
held out by the person as a place for receiving
communications.

(4) A person notifies or gives a notification by taking steps
reasonably required to inform another person in ordinary course,
whether or not the other person learns of it.

(5)(a) For purposes of this subsection, a person exercises
reasonable diligence if the person maintains reasonable procedures
for communicating significant information to an individual
conducting a particular transaction and there is reasonable
compliance with the procedures. Reasonable diligence does not
require an individual acting for the person to communicate
information unless the communication is part of the individual's
regular duties or the individual has reason to know of the
transaction and that the transaction would be materially affected
by the information.

(b) Except as provided in section 12 of this chapter, a person
other than an individual knows, has notice, or receives a
notification of a fact for purposes of a particular transaction:

(1) when the individual conducting the transaction knows, has
notice, or receives a notification of the fact; or

(2) in any event when the fact would have been brought to the
individual's attention if the person had exercised reasonable
diligence.

SECTION 3. IC 23-4-1-5 IS AMENDED TO READ AS FOLLOWS
[EFFECTIVE JULY 1, 2004]: Sec. 5. (1) In any case not provided for
in this chapter, the rules of law and equity, including the law merchant,
shall govern.

(2) If an obligation to pay interest arises under this chapter and
the rate is not specified or agreed upon, the rate must be that
provided under IC 24-4.6-1-102.

SECTION 4. IC 23-4-1-6 IS AMENDED TO READ AS FOLLOWS
[EFFECTIVE JULY 1, 2004]: Sec. 6. (1) A partnership is an
association of two (2) or more persons to carry on as co-owners a
business for profit, **whether or not the persons intended to form a
partnership**, and includes for all purposes of the laws of this state a

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limited liability partnership.

(2) An association formed under any other statute of this state, or any statute adopted by authority, other than the authority of this state, is not a partnership under this chapter, unless such association would have been a partnership in this state prior to January 1, 1950; but this chapter shall apply to limited partnerships except insofar as the statutes relating to such partnerships are inconsistent with this chapter.

(3) A partnership is an entity distinct from its partners.

SECTION 5. IC 23-4-1-7.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 7.5. (1) A partnership may sue and be sued in the name of the partnership.**

(2) An action may be brought against the partnership and any or all of the partners in the same action or in separate actions.

(3) A judgment against a partnership is not by itself a judgment against a partner. A judgment against a partnership may not be satisfied from a partner's assets unless there is also a judgment against the partner.

(4) A judgment creditor of a partner may not levy execution against the assets of the partner to satisfy a judgment based on a claim against the partnership unless:

(a) a judgment based on the same claim has been obtained against the partnership and a writ of execution on the judgment has been returned unsatisfied in whole or in part;

(b) the partnership is a debtor in bankruptcy;

(c) the partner has agreed that the creditor need not exhaust partnership assets;

(d) a court grants permission to the judgment creditor to levy execution against the assets of a partner based on a finding that partnership assets subject to execution are clearly insufficient to satisfy the judgment, that exhaustion of partnership assets is excessively burdensome, or that the grant of permission is an appropriate exercise of the court's equitable powers; or

(e) liability is imposed on the partner by law or contract independent of the existence of the partnership.

(5) This section applies to any partnership liability or obligation resulting from a representation by a partner or purported partner under section 16 of this chapter.

SECTION 6. IC 23-4-1-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 8. (1) Property is acquired in the name of a partnership if it is transferred to:**

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1 (a) the partnership in its name; or

2 (b) one (1) or more partners in their capacity as partners if
3 the name of the partnership is indicated in the instrument
4 transferring title to the property.

5 (2) All property originally brought into the partnership stock or
6 subsequently acquired in the name of:

7 (a) the partnership; or

8 (b) one (1) or more partners with an indication in the
9 instrument transferring title to the property of:

10 (1) the partner's capacity as a partner; or

11 (2) the existence of the partnership, with or without the
12 name of the partnership;

13 by purchase or otherwise, on account of the partnership, is partnership
14 property.

15 ~~(2)~~(3) Unless the contrary intention appears, property acquired with
16 partnership funds is partnership property, **even if not acquired in the**
17 **name of the partnership or of one (1) or more partners if the**
18 **instrument transferring title to the property indicates:**

19 (a) the partner's capacity as a partner; or

20 (b) the existence of the partnership.

21 ~~(3)~~ (4) Any estate in real property may be acquired in the
22 partnership name. Title so acquired can be conveyed only in the
23 partnership name.

24 ~~(4)~~ (5) A conveyance to a partnership in the partnership name,
25 though without words of inheritance, passes the entire estate of the
26 grantor unless a contrary intent appears.

27 (6) **Property acquired in the name of one (1) or more partners,**
28 **without use of partnership assets and without an indication in the**
29 **instrument transferring title to the property of:**

30 (a) the partner's capacity as a partner; or

31 (b) the existence of the partnership;

32 **is presumed not to be partnership property, even if used for**
33 **partnership purposes.**

34 SECTION 7. IC 23-4-1-9 IS AMENDED TO READ AS FOLLOWS
35 [EFFECTIVE JULY 1, 2004]: Sec. 9. (1) Every partner is an agent of
36 the partnership for the purpose of its business, and the act of every
37 partner, including the execution in the partnership name of any
38 instrument, for apparently carrying on in the usual way the business of
39 the partnership of which ~~he~~ **the partner** is a member binds the
40 partnership, unless the partner so acting has in fact no authority to act
41 for the partnership in the particular matter, and the person with whom
42 ~~he~~ **the partner** is dealing has knowledge **or has received notice** of the

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fact that ~~he~~ **the partner** has no such authority.

(2) An act of a partner which is not apparently for the carrying on of the business of the partnership in the usual way does not bind the partnership unless **the act was** authorized by the other partners.

(3) Unless authorized by the other partners or unless they have abandoned the business, one (1) or more but less than all the partners have no authority to:

(a) Assign the partnership property in trust for creditors or on the assignee's promise to pay the debts of the partnership.

(b) Dispose of the good will of the business.

(c) Do any other act which would make it impossible to carry on the ordinary business of a partnership.

(d) Confess a judgment.

(e) Submit a partnership claim or liability to arbitration or reference.

(4) No act of a partner in contravention of a restriction on authority shall bind the partnership to persons having knowledge of the restriction.

SECTION 8. IC 23-4-1-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 10. (1) Where title to ~~real~~ property is in the partnership name, any partner may convey title to such property by a conveyance executed in the partnership name. ~~but the partnership may recover such property unless the partner's act binds the partnership under the provisions of section 9(1) of this chapter; or unless such property has been conveyed by the grantee or a person claiming through such grantee to a holder for value without knowledge that the partner, in making the conveyance, has exceeded his authority.~~

(2) Where title to real property is in the name of the partnership, a conveyance executed by a partner, in his own name, passes the equitable interest of the partnership; provided the act is one within the authority of the partner under the provisions of section 9(1) of this chapter:

(3) Where title to real property is in the name of one (1) or more but not all the partners; and the record does not disclose the right of the partnership; the partners in whose name the title stands may convey title to such property; but the partnership may recover such property if the partners' act does not bind the partnership under the provisions of section 9(1) of this chapter; unless the purchaser or his assignee; is a holder for value; without knowledge:

(2) Where the title to partnership property is held in the name of one (1) or more but not all the partners and the instrument transferring the property to them indicates:

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(a) their capacity as partners; or

(b) the existence of the partnership, without giving the name of the partnership;

the property may be transferred by a conveyance executed by the partners in whose name the property is held.

(3) Where the title to partnership property is held in the name of one (1) or more but not all the partners and the instrument transferring the property to them does not indicate:

(a) their capacity as partners; or

(b) the existence of the partnership, without giving the name of the partnership;

the property may be transferred by a conveyance executed by the partners in whose name the property is held.

(4) Where the title to ~~real~~ property is in the name of one (1) or more or all the partners, or in a third person in trust for the partnership, a conveyance executed by a partner in the partnership name, or in ~~his~~ the person's own name, passes the equitable interest of the partnership, provided the act is one within the authority of the partner under the provisions of section 9(1) of this chapter.

(5) Where the title to ~~real~~ property is in the names of all the partners, a conveyance executed by all the partners passes all their rights in such property.

(6) A partnership may recover partnership property from a transferee only if it proves that execution of the conveyance did not bind the partnership under section 9(1) of this chapter and:

(a) as to a subsequent transferee who gave value for property transferred under subsection (1) or (2), proves that the subsequent transferee knew or had received notice that the person who executed the original conveyance lacked authority to bind the partnership; or

(b) as to a transferee who gave value for property transferred under subsection (3), proves that the transferee knew or had notice that the property was partnership property and that the person who executed the original conveyance lacked authority to bind the partnership.

(7) A partnership may not recover partnership property from a subsequent transferee if the partnership would not have been entitled to recover the property under subsection (6) from an earlier transferee.

(8) If a person holds all the interests of the partners in a partnership, all of the partnership's property vests in that person. The person may execute a document in the name of the partnership

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1 **to evidence vesting of the property in that person and may file or**
 2 **record the document.**

3 SECTION 9. IC 23-4-1-14 IS AMENDED TO READ AS
 4 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 14. The partnership is
 5 bound to make good ~~the~~ a loss:

6 (a) where one partner acting within the scope of ~~his~~ **the partner's**
 7 apparent authority receives money or property of a third person
 8 and misapplies it; ~~and or~~

9 (b) where the partnership in the course of its business receives
 10 money or property of a third person and the money or property so
 11 received is misapplied by any partner while it is in the custody of
 12 the partnership.

13 SECTION 10. IC 23-4-1-15 IS AMENDED TO READ AS
 14 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 15. (1) Except as
 15 provided in ~~paragraph subsection~~ **(2) and section 17 of this chapter,**
 16 all partners are liable

17 ~~(a) jointly and severally for everything chargeable to all~~
 18 **obligations of the partnership under sections 13 and 14 of this**
 19 **chapter unless otherwise agreed to by a claimant or provided**
 20 **by law.**

21 ~~(b) jointly for all other debts and obligations of the partnership;~~
 22 ~~but any partner may enter into a separate obligation to perform a~~
 23 ~~partnership contract.~~

24 (2) A partner of a limited liability partnership is not personally
 25 liable, directly or indirectly, including by way of indemnification,
 26 contribution, or otherwise, for:

27 (a) the debts, obligations, or liabilities of, or chargeable to, the
 28 limited liability partnership or other partner or partners, whether
 29 arising in tort, contract, or otherwise; or

30 (b) the acts or omissions of any other partner;

31 solely by reason of being a partner, acting or failing to act as a partner,
 32 or participating as an employee, a consultant, a contractor, or otherwise
 33 in the conduct of the business or activities of the limited liability
 34 partnership while the partnership is a limited liability partnership.

35 (3) A partner of a limited liability partnership may be personally
 36 liable for the partner's own acts or omissions.

37 (4) A limited liability partnership is liable out of partnership assets
 38 for partnership debts, obligations, and liabilities.

39 (5) A partner in a limited liability partnership is not a proper party
 40 to a proceeding by or against the limited liability partnership, the object
 41 of which is to recover any debts, obligations, or liabilities of, or
 42 chargeable to, the partnership, unless the partner is personally liable

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under ~~paragraph~~ **subsection (3)**.

(6) The laws of Indiana or another jurisdiction may not impose personal liability on a partner in a limited liability partnership. The only actions required of a limited liability partnership or of individual partners in such a partnership in order to avail themselves of the limited liability provisions of this chapter are those required by this chapter.

SECTION 11. IC 23-4-1-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 16. (1) When a person, by words spoken or written or by conduct, represents himself **or herself**, or consents to another representing ~~him the person or any one~~, **to anyone** as a partner in an existing partnership or with one (1) or more persons not actual partners, ~~he the person~~ is liable to any ~~such~~ person to whom ~~such the~~ representation has been made, who has, on the faith of ~~such the~~ representation, given credit to the actual or apparent partnership, and if ~~he the person~~ has made ~~such the~~ representation or consented to its being made in a public manner ~~he the person~~ is liable to ~~such that~~ person, whether the representation has or has not been made or communicated to ~~such the~~ person so giving credit by or with the knowledge of the apparent partner making the representation or consenting to its being made.

(a) When a partnership liability results, ~~he the person~~ is liable as though ~~he the person~~ were an actual member of the partnership.

(b) When no partnership liability results, ~~he the person~~ is liable jointly with the other persons, if any, so consenting to the contract or representation as to incur liability, otherwise separately.

(2) When a person has been thus represented to be a partner in an existing partnership, or with one (1) or more persons not actual partners, ~~he the person~~ is an agent of the persons consenting to ~~such the~~ representation to bind them to the same extent and in the same manner as though ~~he the person~~ were a partner in fact, with respect to persons who rely upon the representation. Where all the members of the existing partnership consent to the representation, a partnership act or obligation results; but in all other cases it is the joint act or obligation of the person acting and the persons consenting to the representation.

(3) **A person is not liable as a partner solely because the person is named by another in a statement of partnership authority.**

(4) **A person does not continue to be liable as a partner solely because of a failure to file a statement of dissociation or to amend a statement of partnership authority to indicate the partner's dissociation from the partnership.**

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1 **(5) Except as provided in subsections (1) and (2), persons who**
 2 **are not partners as to each other are not liable as partners to other**
 3 **persons.**

4 SECTION 12. IC 23-4-1-18 IS AMENDED TO READ AS
 5 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 18. **(1) Except as**
 6 **provided under subsection (2),** the rights and duties of the partners in
 7 relation to the partnership **and to each other** shall be determined,
 8 subject to any agreement between them, by the following rules:

9 (a) Each partner shall be repaid ~~his~~ **the partner's** contributions,
 10 whether by way of capital or advances to the partnership property
 11 and share equally in the profits and surplus remaining after all
 12 liabilities, including those to partners, are satisfied; and except as
 13 provided in section 15(2) of this chapter, each partner must
 14 contribute toward the losses, whether of capital or otherwise,
 15 sustained by the partnership according to ~~his~~ **the partner's** share
 16 in the profits.

17 (b) The partnership must indemnify every partner ~~in respect of~~
 18 ~~payments made and for~~ personal liabilities reasonably incurred
 19 **and reimburse a partner for payments made by him the**
 20 **partner** in the ordinary and proper conduct of its business, or for
 21 the preservation of its business or property. **A partnership**
 22 **obligation that arises under this subdivision constitutes a loan**
 23 **to the partnership and accrues interest from the date the**
 24 **payment is made.**

25 (c) A partner, who in aid of the partnership makes any payment or
 26 advance beyond the amount of capital which ~~he~~ **the partner**
 27 agreed to contribute, shall be paid interest from the date of the
 28 payment or advance.

29 (d) A partner shall receive interest on the capital contributed by
 30 ~~him~~ **the partner** only from the date when repayment should be
 31 made.

32 (e) All partners have equal rights in the management and conduct
 33 of the partnership business.

34 (f) No partner is entitled to remuneration for acting in the
 35 partnership business, except that a surviving partner is entitled to
 36 reasonable compensation for ~~his~~ **the partner's** services in
 37 winding up the partnership affairs.

38 (g) No person can become a member of a partnership without the
 39 consent of all the partners.

40 (h) Any difference arising as to ordinary matters connected with
 41 the partnership business may be decided by a majority of the
 42 partners; but no act in contravention of any agreement between

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the partners may be done rightfully without the consent of all the partners.

(i) The law of the jurisdiction in which a partnership has its chief executive office governs relations among the partners and between the partners and the partnership.

(2) A partnership agreement may not:

(a) vary the rights and duties under section 19.5 of this chapter except to eliminate the duty to provide copies of statements to all of the partners;

(b) unreasonably restrict the right of access to books and records under section 19 of this chapter;

(c) eliminate the duty of loyalty under sections 21(2)(c) and 55(2)(c) of this chapter, but:

(1) the partnership agreement may identify specific types of activities that do not violate the duty if not manifestly unreasonable; or

(2) all of the partners, or a number or percentage specified in the partnership agreement, may authorize or ratify, after full disclosure of all material facts, a specific act that otherwise would violate the duty;

(d) unreasonably reduce the duty of care under section 21(3) or 55(2)(c) of this chapter;

(e) eliminate the obligation of good faith and fair dealing under section 21(4) of this chapter, but the partnership agreement may prescribe the standards by which the obligation is measured if the standards are not manifestly unreasonable;

(f) vary the power to dissociate a partner as a partner under section 54(1) of this chapter, except to require the notice under section 52.5(a) of this chapter to be in writing;

(g) vary the right of a court to expel a partner in the events specified in section 52.5(e) of this chapter;

(h) vary the requirement to wind up partnership business under section 67(4) through 67(6) of this chapter; or

(i) restrict the rights of third parties under this chapter.

SECTION 13. IC 23-4-1-18.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 18.5. A partner has no right to receive and may not be required to accept a distribution in kind.**

SECTION 14. IC 23-4-1-19 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 19. (1) The partnership books and records shall be kept, subject to any agreement between the**

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1 partners, at the principal place of business chief executive office of the
 2 partnership, and every partner shall at all times have access to and may
 3 inspect and copy any of them.

4 (2) A partnership shall provide during regular business hours
 5 a former partner and the former partner's agent and attorney
 6 access to and an opportunity to inspect and copy books and records
 7 pertaining to the period the former partner was a partner. A
 8 partnership may impose a reasonable charge to cover the costs of
 9 labor and material for copies of documents.

10 (3) A partner and the partnership shall furnish to a partner or
 11 the legal representative of a deceased partner or partner under
 12 legal disability:

13 (a) without demand, any information concerning the
 14 partnership's business and affairs reasonably required for the
 15 proper exercise of the partner's rights and duties under the
 16 partnership agreement or this chapter; and

17 (b) on demand, any other information concerning the
 18 partnership's business and affairs, except to the extent the
 19 demand or the information demanded is unreasonable or
 20 otherwise improper under the circumstances.

21 SECTION 15. IC 23-4-1-19.5 IS ADDED TO THE INDIANA
 22 CODE AS A NEW SECTION TO READ AS FOLLOWS
 23 [EFFECTIVE JULY 1, 2004]: Sec. 19.5. (1) A statement or a
 24 certified copy of a statement that is filed in another state may be
 25 filed in the office of the secretary of state. A filing under this
 26 section has the effect provided in this chapter with respect to
 27 partnership property located in or transactions that occur in
 28 Indiana.

29 (2) A certified copy of a statement that has been filed under
 30 subsection (1) and recorded in an appropriate office for recording
 31 transfers of real property has the effect provided for recorded
 32 instruments in this chapter. A recorded statement that is not a
 33 certified copy of a statement filed under subsection (1) does not
 34 have that effect.

35 (3) A statement filed by a partnership must be executed by at
 36 least two (2) partners. Other statements must be executed by a
 37 partner or other person authorized under this chapter. An
 38 individual who executes a statement as, or on behalf of, a partner
 39 or other person named as a partner in a statement shall declare
 40 under penalty of perjury that the contents of the statement are
 41 accurate.

42 (4) A person authorized by this chapter to file a statement may

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1 amend or cancel the statement by filing an amendment or
 2 cancellation that names the partnership, identifies the statement,
 3 and states the substance of the amendment or cancellation.

4 (5) A person who files a statement under this section shall
 5 promptly send a copy of the statement to every nonfiling partner
 6 and to any other person named as a partner in the statement.
 7 Failure to send a copy under this subsection does not limit the
 8 effectiveness of the statement as to a partner or other person.

9 (6) The secretary of state may collect a fee for filing or
 10 providing a certified copy of a statement. A recording officer under
 11 subsection (2) may collect a fee for recording a statement.

12 SECTION 16. IC 23-4-1-19.7 IS ADDED TO THE INDIANA
 13 CODE AS A NEW SECTION TO READ AS FOLLOWS
 14 [EFFECTIVE JULY 1, 2004]: Sec. 19.7. (1) A partnership may file
 15 a statement of partnership authority that:

16 (a) must include:

17 (1) the name of the partnership;

18 (2) the street address of the partnership's chief executive
 19 office and of one (1) office in the state, if there is any;

20 (3) the names and mailing addresses of the partners or of
 21 an agent appointed and maintained by the partnership for
 22 purposes of subsection (2); and

23 (4) the names of the partners authorized to execute an
 24 instrument transferring real property held in the name of
 25 the partnership; and

26 (b) may state the authority, or limitations of authority, of
 27 some or all of the partners to enter into transactions not
 28 involving the transfer of real property on behalf of the
 29 partnership and any other matter.

30 (2) If a statement of partnership authority names an agent, the
 31 agent shall maintain a list of the names and mailing addresses of
 32 the partners and make it available to a person on request for good
 33 cause.

34 (3) If a filed statement of partnership authority is executed
 35 under section 19.5(3) of this chapter and states the name of the
 36 partnership but does not contain all the information required by
 37 subsection (1), the statement nevertheless operates with respect to
 38 a person not a partner as provided in subsections (4) and (5).

39 (4) Except as provided in subsection (7), a filed statement of
 40 partnership authority supplements the authority of a partner to
 41 enter into a transaction on behalf of the partnership as follows:

42 (a) Except for transfers of real property, a grant of authority

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1 contained in a filed statement of partnership authority is
 2 conclusive in favor of a person who gives value without
 3 knowledge to the contrary, so long as and to the extent that a
 4 limitation on that authority is not then contained in another
 5 filed statement. A filed cancellation of a limitation on
 6 authority revives the previous grant of authority.

7 (b) A grant of authority to transfer real property held in the
 8 name of the partnership contained in a certified copy of a filed
 9 statement of partnership authority recorded under section
 10 19.5 of this chapter is conclusive in favor of a person who
 11 gives value without knowledge to the contrary, so long as and
 12 to the extent that a certified copy of a filed statement
 13 containing a limitation on that authority is not then of record
 14 in the office for recording transfers of that real property. The
 15 recording of a certified copy of a filed cancellation of
 16 authority in that office revives the previous grant of authority.

17 (5) A person not a partner is considered to know of a limitation
 18 on the authority of a partner to transfer real property held in the
 19 name of the partnership if a certified copy of the filed statement
 20 containing the limitation on authority is of record in the office for
 21 recording transfers of that property.

22 (6) Except as provided in subsections (4) and (5) and sections 59
 23 and 65 of this chapter, a person not a partner is not considered to
 24 know of a limitation on the authority of a partner merely because
 25 the limitation is contained in a filed statement.

26 (7) Unless canceled earlier, a filed statement of partnership
 27 authority is canceled by operation of law five (5) years after the
 28 date on which the statement, or its most recent amendment, was
 29 filed with the secretary of state.

30 SECTION 17. IC 23-4-1-19.9 IS ADDED TO THE INDIANA
 31 CODE AS A NEW SECTION TO READ AS FOLLOWS
 32 [EFFECTIVE JULY 1, 2004]: Sec. 19.9. A partner or other person
 33 named as a partner in a filed statement of partnership authority or
 34 in a list maintained by an agent under section 19.7(2) of this
 35 chapter may file a statement of denial stating the name of the
 36 partnership and the fact that is being denied. A denial under this
 37 section may include denial of a person's authority or status as a
 38 partner. A statement of denial is a limitation on authority under
 39 section 19.7(4) and 19.7(5) of this chapter.

40 SECTION 18. IC 23-4-1-21 IS AMENDED TO READ AS
 41 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 21. (1) The only
 42 fiduciary duties a partner owes to the partnership and the other

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partners are the duty of loyalty and the duty of care set forth in subsections (2) and (3).

(2) A partner's duty of loyalty is limited to the following:

(a) Every A partner ~~must~~ **shall** account to the partnership for any benefit, and hold as trustee for it any profits derived by ~~him~~ **the partner** without the consent of the other partners from any transaction connected with the formation, conduct, or liquidation of the partnership or from any use by ~~him~~ **the partner** of its property, **including the appropriation of a partnership opportunity.**

(b) A partner shall refrain from dealing with the partnership in the conduct or winding up of the partnership business as or on behalf of a party having an interest adverse to the partnership.

(c) A partner shall refrain from competing with the partnership in the conduct of the partnership business before the dissolution of the partnership.

(3) A partner's duty of care in the conduct and winding up of the partnership business is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

(4) A partner shall discharge the duties under this chapter and the partnership agreement and exercise the partner's rights consistently with the obligation of good faith and fair dealing.

(5) A partner does not violate a duty or obligation under this chapter or the partnership agreement merely because the partner's conduct furthers the partner's own interest.

(6) A partner may lend money to and transact other business with the partnership. Except as otherwise provided, the rights and obligations of the partner for each transaction are the same as those of a person who is not a partner.

~~(2)~~ (7) This section applies also to the representatives of a deceased partner engaged in the liquidation of the affairs of the partnership as the personal representatives of the last surviving partner.

SECTION 19. IC 23-4-1-22.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 22.5. (1) A partnership may maintain an action against a partner for a breach of the partnership agreement or the violation of a duty to the partnership causing harm to the partnership.**

(2) A partner may maintain an action against the partnership or another partner for legal or equitable relief, with or without an

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accounting as to partnership business, to enforce:

(a) the partner's rights under the partnership agreement;

(b) the partner's rights under this chapter, including:

(1) the partner's rights under sections 18, 19, and 21 of this chapter;

(2) the partner's right on dissociation to have the partner's interest in the partnership purchased under section 56 of this chapter or enforce any other right under sections 52.5 through 60 of this chapter; or

(3) the partner's right to compel a dissolution and winding up of the partnership under section 61 of this chapter or enforce any other right under sections 61 through 67 of this chapter; or

(c) the rights and otherwise protect the interests of the partner, including rights and interests arising independently of the partnership.

(3) A right to an accounting upon a dissolution and winding up does not revive a claim barred by law.

SECTION 20. IC 23-4-1-25 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 25. (†) A partner is **not** a co-owner with his the partner's partners of specific partnership property holding as a tenant in partnership; and has no transferable interest in partnership property.

(2) The incidents of this tenancy are such that:

(a) A partner, subject to the provisions of this chapter and to any agreement between the partners, has an equal right with his partners to possess specific partnership property for partnership purposes; but he has no right to possess such property for any other purpose without the consent of his partners.

(b) A partner's right in specific partnership property is not assignable except in connection with the assignment of rights of all the partners in the same property.

(c) A partner's right in specific partnership property is not subject to attachment or execution, except on a claim against the partnership. When partnership property is attached for a partnership debt, the partners, or any of them, or the representatives of a deceased partner, cannot claim any right under the homestead or exemption laws.

(d) On the death of a partner, his right in specific partnership property vests in the surviving partner or partners, except where the deceased was the last surviving partner, when his right in such property vests in his legal representative. Such surviving partner

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or partners, or the legal representative of the last surviving partner, has no right to possess the partnership property for any but a partnership purpose.

(c) A partner's right in specific partnership property is not subject to allowances to surviving spouses, heirs, or next of kin.

SECTION 21. IC 23-4-1-26 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 26. A partner's **transferable** interest in the partnership is ~~his~~ **the partner's** share of the profits and ~~surplus, and losses of the partnership and the partner's right to receive distributions.~~ The ~~same~~ interest is personal property.

SECTION 22. IC 23-4-1-27 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 27. (1) A conveyance by a partner, **in whole or in part**, of ~~his~~ **the partner's** interest in the partnership does not of itself **cause the partner's dissociation** or dissolve the partnership, nor, as against the other partners in the absence of agreement, entitle the assignee, during the continuance of the partnership, to interfere in the management or administration of the partnership business or affairs, or to require any information or account of partnership transactions, or to inspect the partnership books.

(2) A conveyance under subsection (1) but it merely entitles the assignee to:

(a) receive in accordance with ~~his~~ **the** contract the ~~profits~~ **distributions** to which the assigning partner would otherwise be entitled;

~~(2) (b)~~ **(b)** in case of a dissolution of the partnership, ~~the assignee is entitled to receive his~~ **the** assignor's interest and ~~may~~ require an account from the date only of the last account agreed to by all the partners; **and**

(c) seek under section 61(f) of this chapter a judicial determination that is equitable to wind up the partnership business.

(3) Upon conveyance under subsection (1), the assignor retains the rights and duties of a partner other than the interest in distributions transferred.

(4) A partnership need not give effect to an assignee's rights under this section until it has notice of the transfer.

(5) A conveyance of a partner's transferable interest in the partnership in violation of a restriction on transfer contained in the partnership agreement is ineffective as to a person having notice of the restriction at the time of transfer.

SECTION 23. IC 23-4-1-28 IS AMENDED TO READ AS

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FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 28. (1) On due application to a competent court by any judgment creditor of a partner **or a partner's assignee**, the court which entered the judgment, order, or decree, or any other court, may charge the interest of the **judgment debtor partner** with payment of the unsatisfied amount of such judgment debt with interest thereon; and may then or later appoint a receiver of ~~his~~ **the debtor's** share of the profits, and of any other money due or to fall due to ~~him~~ **the debtor** in respect of the partnership, and make all other orders, directions, accounts, and inquiries which the **judgment debtor partner** might have made, or which the circumstances of the case may require.

(2) **A charging order constitutes a lien on the judgment debtor's transferable interest in the partnership. The court may order a foreclosure of the interest subject to the charging order at any time. A purchaser at a foreclosure sale has the rights of a transferee of the interest.**

(3) The interest charge may be redeemed at any time before foreclosure, or in case of a sale being directed by the court may be purchased without thereby causing a dissolution:

(a) with separate property, by any one (1) or more of the partners; or

(b) with partnership property, by any one (1) or more of the partners with the consent of all the partners whose interests are not so charged or sold.

~~(3)~~ (4) Nothing in this chapter shall be held to deprive a partner of ~~his~~ **a** right, if any, under the exemption laws, as regards ~~his~~ **the partner's** interest in the partnership.

(5) **This section provides the exclusive remedy by which a judgment creditor of a partner or partner's transferee may satisfy a judgment out of the judgment debtor's transferable interest in the partnership.**

SECTION 24. IC 23-4-1-46 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 46. A partnership that has registered as a limited liability partnership is for all purposes the same entity that existed before the registration and continues to be a partnership under the laws of this state. If a limited liability partnership dissolves under section ~~29~~ **61** of this chapter, a partnership that is a successor to the limited liability partnership and that intends to be a limited liability partnership is not required to file a new registration and is considered to have filed any documents required or permitted under this section that were filed by the predecessor partnership.

SECTION 25. IC 23-4-1-52.5 IS ADDED TO THE INDIANA

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CODE AS A NEW SECTION TO READ AS FOLLOWS
 [EFFECTIVE JULY 1, 2004]: **Sec. 52.5. A partner is dissociated
 from a partnership upon the occurrence of any of the following:**

**(a) The partnership's having notice of the partner's express
 will to withdraw as a partner immediately or on a later date
 specified by the partner.**

**(b) An event agreed to in the partnership agreement as
 causing the partner's dissociation.**

(c) The partner's expulsion under the partnership agreement.

**(d) The partner's expulsion by the unanimous vote of the
 other partners if:**

**(1) it is unlawful to carry on the partnership business with
 that partner;**

**(2) there has been a transfer of all or substantially all of
 that partner's transferable interest in the partnership,
 other than a transfer for security purposes, or a court
 order charging the partner's interest, which has not been
 foreclosed;**

**(3) within ninety (90) days after the partnership notifies a
 corporate partner that it will be expelled because it has
 filed a certificate of dissolution or the equivalent, its
 charter has been revoked, or its right to conduct business
 has been suspended by the jurisdiction of its incorporation,
 there is no revocation of the certificate of dissolution or no
 reinstatement of its charter or its right to conduct
 business; or**

**(4) a partnership that is a partner has been dissolved and
 its business is being wound up.**

**(e) On application by the partnership or another partner, the
 partner's expulsion by judicial determination because:**

**(1) the partner engaged in wrongful conduct that adversely
 and materially affected the partnership business;**

**(2) the partner willfully or persistently committed a
 material breach of the partnership agreement or of a duty
 owed to the partnership or the other partners under
 section 18 of this chapter; or**

**(3) the partner engaged in conduct relating to the
 partnership business that makes it not reasonably
 practicable to carry on the business in partnership with the
 partner.**

(f) The partner's:

(1) becoming a debtor in bankruptcy;

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- (2) executing an assignment for the benefit of creditors;
- (3) seeking, consenting to, or acquiescing in the appointment of a trustee, receiver, or liquidator of that partner or of all or substantially all of that partner's property; or
- (4) failing, within ninety (90) days after the appointment, to have vacated or stayed the appointment of a trustee, receiver, or liquidator of the partner or of all or substantially all of the partner's property obtained without the partner's consent or acquiescence, or failing within ninety (90) days after the expiration of a stay to have the appointment vacated.

(g) Where a partner is an individual:

- (1) the partner's death;
- (2) the appointment of a guardian or general conservator for the partner; or
- (3) a judicial determination that the partner has otherwise become incapable of performing the partner's duties under the partnership agreement.

(h) Where a partner is a trust or is acting as a partner by virtue of being a trustee of a trust, distribution of the trust's entire transferable interest in the partnership, but not merely by reason of the substitution of a successor trustee.

(i) Where a partner is an estate or is acting as a partner by virtue of being a personal representative of an estate, distribution of the estate's entire transferable interest in the partnership, but not merely by reason of the substitution of a successor personal representative.

(j) Termination of a partner who is not an individual, partnership, corporation, trust, or estate.

SECTION 26. IC 23-4-1-54 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 54. (1) A partner has the power to dissociate at any time, rightfully or wrongfully, by express will under section 52.5(a) of this chapter.

(2) A partner's dissociation is wrongful only if:

- (a) it is in breach of an express provision of the partnership agreement; or
- (b) in the case of a partnership for a definite term or particular undertaking, before the expiration of the term or the completion of the undertaking:

- (1) the partner withdraws by express will, unless the

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1 withdrawal follows within ninety (90) days after another
 2 partner's dissociation by death or otherwise under section
 3 52.5(f) through 52.5(j) of this chapter or wrongful
 4 dissociation under this subsection;

5 (2) the partner is expelled by judicial determination under
 6 section 52.5(e) of this chapter;

7 (3) the partner is dissociated by becoming a debtor in
 8 bankruptcy; or

9 (4) where a partner is not an individual, trust other than a
 10 business trust, or estate, the partner is expelled or
 11 otherwise dissociated because the partner willfully
 12 dissolved or terminated.

13 (3) A partner who wrongfully dissociates is liable to the
 14 partnership and to the other partners for damages caused by the
 15 dissociation. The liability is in addition to any other obligation of
 16 the partner to the partnership or to the other partners.

17 SECTION 27. IC 23-4-1-55 IS ADDED TO THE INDIANA CODE
 18 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 19 1, 2004]: Sec. 55. (1) If a partner's dissociation results in a
 20 dissolution and winding up of the partnership business, sections 61
 21 through 67 of this chapter apply, otherwise sections 56 through 60
 22 of this chapter apply.

23 (2) Upon a partner's dissociation:

24 (a) the partner's right to participate in the management and
 25 conduct of the partnership business terminates, except as
 26 otherwise provided in section 63 of this chapter;

27 (b) the partner's duty of loyalty under section 21(2)(c) of this
 28 chapter terminates; and

29 (c) the partner's duty of loyalty under section 21(2)(a) and
 30 21(2)(b) of this chapter and duty of care under section 21(3)
 31 of this chapter continue only with regard to matters arising
 32 and events occurring before the partner's dissociation, unless
 33 the partner participates in winding up the partnership's
 34 business under section 63 of this chapter.

35 SECTION 28. IC 23-4-1-56 IS ADDED TO THE INDIANA CODE
 36 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 37 1, 2004]: Sec. 56. (1) If a partner is dissociated from a partnership
 38 without resulting in a dissolution and winding up of the
 39 partnership business under section 61 of this chapter, the
 40 partnership shall cause the dissociated partner's interest in the
 41 partnership to be purchased for a buyout price determined
 42 pursuant to subsection (2).

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(2) The buyout price of a dissociated partner's interest is the amount that would have been distributable to the dissociating partner under section 67(2) of this chapter if, on the date of dissociation, the assets of the partnership were sold at a price equal to the greater of the liquidation value or the value based on a sale of the entire business as a going concern without the dissociated partner and the partnership were wound up as of that date. Interest must be paid from the date of dissociation to the date of payment.

(3) Damages for wrongful dissociation under section 54(2) of this chapter, and all other amounts owing, whether or not presently due, from the dissociated partner to the partnership, must be offset against the buyout price. Interest must be paid from the date the amount owed becomes due to the date of payment.

(4) A partnership shall indemnify a dissociated partner whose interest is being purchased against all partnership liabilities, whether incurred before or after the dissociation, except liabilities incurred by an act of the dissociated partner under section 57 of this chapter.

(5) If no agreement for the purchase of a dissociated partner's interest is reached within one hundred twenty (120) days after a written demand for payment, the partnership shall pay, or cause to be paid, in cash to the dissociated partner the amount the partnership estimates to be the buyout price and accrued interest, reduced by any offsets and accrued interest under subsection (3).

(6) If a deferred payment is authorized under subsection (8), the partnership may tender a written offer to pay the amount it estimates to be the buyout price and accrued interest, reduced by any offsets under subsection (3), stating the time of payment, the amount and type of security for payment, and the other terms and conditions of the obligation.

(7) The payment or tender required by subsection (5) or (6) must be accompanied by the following:

- (a) A statement of partnership assets and liabilities as of the date of dissociation.
- (b) The latest available partnership balance sheet and income statement, if any.
- (c) An explanation of how the estimated amount of the payment was calculated.
- (d) Written notice that the payment is in full satisfaction of the obligation to purchase unless, within one hundred twenty (120) days after the written notice, the dissociated partner

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commences an action to determine the buyout price, any offsets under subsection (3), or other terms of the obligation to purchase.

(8) A partner who wrongfully dissociates before the expiration of a definite term or the completion of a particular undertaking is not entitled to payment of any portion of the buyout price until the expiration of the term or completion of the undertaking, unless the partner establishes to the satisfaction of the court that earlier payment will not cause undue hardship to the business of the partnership. A deferred payment must be adequately secured and bear interest.

(9) A dissociated partner may maintain an action against the partnership, under section 22.5(2)(b)(2) of this chapter, to determine the buyout price of that partner's interest, any offsets under subsection (3), or other terms of the obligation to purchase. The action must be commenced within one hundred twenty (120) days after the partnership has tendered payment or an offer to pay or within one (1) year after written demand for payment if no payment or offer to pay is tendered. The court shall determine the buyout price of the dissociated partner's interest, any offset due under subsection (3), and accrued interest, and enter judgment for any additional payment or refund. If deferred payment is authorized under subsection (8), the court shall also determine the security for payment and other terms of the obligation to purchase. The court may assess reasonable attorney's fees and the fees and expenses of appraisers or other experts for a party to the action, in amounts the court finds equitable, against a party that the court finds acted arbitrarily, vexatiously, or not in good faith. The finding may be based on the partnership's failure to tender payment or an offer to pay or to comply with subsection (7).

SECTION 29. IC 23-4-1-57 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 57. (1) For two (2) years after a partner dissociates without resulting in a dissolution and winding up of the partnership business, the partnership, including a surviving partnership under sections 68 through 75 of this chapter, is bound by an act of the dissociated partner that would have bound the partnership under section 9 of this chapter before dissociation only if at the time of entering into the transaction the other party:

- (a) reasonably believed that the dissociated partner was then a partner;
- (b) did not have notice of the partner's dissociation; and

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(c) is not considered to have had knowledge under section 19.7(5) of this chapter or notice under section 59(3) of this chapter.

(2) A dissociated partner is liable to the partnership for any damage caused to the partnership arising from an obligation incurred by the dissociated partner after dissociation for which the partnership is liable under subsection (1).

SECTION 30. IC 23-4-1-58 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 58. (1) A partner's dissociation does not of itself discharge the partner's liability for a partnership obligation incurred before dissociation. A dissociated partner is not liable for a partnership obligation incurred after dissociation, except as otherwise provided in subsection (2).

(2) A partner who dissociates without resulting in a dissolution and winding up of the partnership business is liable as a partner to the other party in a transaction entered into by the partnership, or a surviving partnership under sections 68 through 75 of this chapter, within two (2) years after the partner's dissociation, only if at the time of entering into the transaction the other party:

- (a) reasonably believed that the dissociated partner was then a partner;
- (b) did not have notice of the partner's dissociation; and
- (c) is not considered to have had knowledge under section 19.7(5) of this chapter or notice under section 59(3) of this chapter.

(3) By agreement with the partnership creditor and the partners continuing the business, a dissociated partner may be released from liability for a partnership obligation.

(4) A dissociated partner is released from liability for a partnership obligation if a partnership creditor, with notice of the partner's dissociation but without the partner's consent, agrees to a material alteration in the nature or time of payment of a partnership obligation.

SECTION 31. IC 23-4-1-59 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 59. (1) A dissociated partner or the partnership may file a statement of dissociation under section 19.7(4) and 19.7(5) of this chapter stating the name of the partnership and that the partner is dissociated from the partnership.

(2) A statement of dissociation is a limitation on the authority of a dissociated partner for purposes of section 19.7(4) and 19.7(5) of

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1 this chapter.

2 (3) For purposes of sections 57(1)(c) and 58(2)(c) of this chapter,
3 a person not a partner is considered to have notice of the
4 dissociation ninety (90) days after the statement of dissociation is
5 filed.

6 SECTION 32. IC 23-4-1-60 IS ADDED TO THE INDIANA CODE
7 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
8 1, 2004]: **Sec. 60. Continued use of a partnership name, or a**
9 **dissociated partner's name as part thereof, by partners continuing**
10 **the business does not of itself make the dissociated partner liable**
11 **for an obligation of the partners or the partnership continuing the**
12 **business.**

13 SECTION 33. IC 23-4-1-61 IS ADDED TO THE INDIANA CODE
14 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
15 1, 2004]: **Sec. 61. A partnership is dissolved, and its business must**
16 **be wound up only upon the occurrence of any of the following**
17 **events:**

18 (a) In a partnership at will, the partnership's having notice
19 from a partner, other than a partner who is dissociated under
20 section 52.5(b) through 52.5(j) of this chapter, of that
21 partner's express will to withdraw as a partner, or on a later
22 date specified by the partner.

23 (b) In a partnership for a definite term or particular
24 undertaking:

25 (1) the expiration of ninety (90) days after a partner's
26 dissociation by death or otherwise under section 52.5(f)
27 through 52.5(j) of this chapter or wrongful dissociation
28 under section 54(2) of this chapter, unless before that time
29 a majority in interest of the remaining partners, including
30 partners who have rightfully dissociated under section
31 54(2)(b)(2) of this chapter, agree to continue the
32 partnership;

33 (2) the express will of all of the partners to wind up the
34 partnership business; or

35 (3) the expiration of the term or the completion of the
36 undertaking.

37 (c) An event agreed to in the partnership agreement resulting
38 in the winding up of the partnership business.

39 (d) An event that makes it unlawful for all or substantially all
40 of the business of the partnership to be continued, but a cure
41 of illegality within ninety (90) days after notice to the
42 partnership of the event is effective retroactively to the date

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of the event for purposes of this section.

(e) On application by a partner, a judicial determination that:

(1) the economic purpose of the partnership is likely to be unreasonably frustrated;

(2) another partner has engaged in conduct relating to the partnership business that makes it not reasonably practicable to carry on the business in partnership with that partner; or

(3) it is not otherwise reasonably practicable to carry on the partnership business in conformity with the partnership agreement.

(f) On application by a transferee of a partner's transferable interest, a judicial determination that it is equitable to wind up the partnership business:

(1) after the expiration of the term or completion of the undertaking, if the partnership was for a definite term or particular undertaking at the time of the transfer or entry of the charging order that gave rise to the transfer; or

(2) at any time, if the partnership was a partnership at will at the time of the transfer or entry of the charging order that gave rise to the transfer.

SECTION 34. IC 23-4-1-62 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 62. (1) Subject to subsection (2), a partnership continues after dissolution only for the purpose of winding up its business. The partnership is terminated when the winding up of its business is completed.

(2) At any time after the dissolution of a partnership and before the winding up of its business is completed, all of the partners, including any dissociating partner other than a wrongfully dissociating partner, may waive the right to have the partnership's business wound up and the partnership terminated. In that event:

(a) the partnership resumes carrying on its business as if dissolution had never occurred, and any liability incurred by the partnership or a partner after the dissolution and before the waiver is determined as if dissolution had never occurred; and

(b) the rights of a third party accruing under section 64(a) of this chapter or arising out of conduct in reliance on the dissolution before the third party knew or received a notification of the waiver may not be adversely affected.

SECTION 35. IC 23-4-1-63 IS ADDED TO THE INDIANA CODE

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1 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
2 1, 2004]: **Sec. 63. (1) After dissolution, a partner who has not**
3 **wrongfully dissociated may participate in winding up the**
4 **partnership's business, but on application of any partner, partner's**
5 **legal representative, or transferee, the court, for good cause shown,**
6 **may order judicial supervision of the winding up.**

7 (2) The legal representative of the last surviving partner may
8 wind up a partnership's business.

9 (3) A person winding up a partnership's business may preserve
10 the partnership business or property as a going concern for a
11 reasonable time, prosecute and defend actions and proceedings,
12 whether civil, criminal, or administrative, settle and close the
13 partnership's business, dispose of and transfer the partnership's
14 property, discharge the partnership's liabilities, distribute the
15 assets of the partnership under section 67 of this chapter, settle
16 disputes by mediation or arbitration, and perform other necessary
17 acts.

18 SECTION 36. IC 23-4-1-64 IS ADDED TO THE INDIANA CODE
19 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
20 1, 2004]: **Sec. 64. Subject to section 65 of this chapter, a**
21 **partnership is bound by a partner's act after dissolution that:**

- 22 (a) is appropriate for winding up the partnership business; or
23 (b) would have bound the partnership under section 9 of this
24 chapter before dissolution, if the other party to the
25 transaction did not have notice of the dissolution.

26 SECTION 37. IC 23-4-1-65 IS ADDED TO THE INDIANA CODE
27 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
28 1, 2004]: **Sec. 65. (1) After dissolution, a partner who has not**
29 **wrongfully dissociated may file a statement of dissolution stating**
30 **the name of the partnership and that the partnership has dissolved**
31 **and is winding up its business.**

32 (2) A statement of dissolution cancels a filed statement of
33 partnership authority for purposes of section 19.7(4) of this
34 chapter and is a limitation on authority for purposes of section
35 19.7(5) of this chapter.

36 (3) For purposes of sections 9 and 64 of this chapter, a person
37 not a partner is considered to have notice of the dissolution and the
38 limitation on the partners' authority as a result of the statement of
39 dissolution ninety (90) days after it is filed.

40 (4) After filing and, if appropriate, recording a statement of
41 dissolution, a dissolved partnership may file and, if appropriate,
42 record a statement of partnership authority that will operate with

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respect to a person not a partner as provided in section 19.7(4) and 19.7(5) of this chapter in any transaction, whether or not the transaction is appropriate for winding up the partnership business.

SECTION 38. IC 23-4-1-66 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 66. (1) Except as otherwise provided in subsection (2), after dissolution a partner is liable to the other partners for the partner's share of any partnership liability incurred under section 64 of this chapter.

(2) A partner who, with knowledge of the dissolution, incurs a partnership liability under section 64(b) of this chapter by an act that is not appropriate for winding up the partnership business is liable to the partnership for any damage caused to the partnership arising from the liability.

SECTION 39. IC 23-4-1-67 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 67. (1) In winding up a partnership's business, the assets of the partnership, including the contributions of the partners required by this section, must be applied to discharge its obligations to creditors, including, to the extent permitted by law, partners who are creditors. Any surplus must be applied to pay in cash the net amount distributable to partners in accordance with their right to distributions under subsection (2).

(2) Each partner is entitled to a settlement of all partnership accounts upon winding up the partnership business. In settling accounts among the partners, the profits and losses that result from the liquidation of the partnership assets must be credited and charged to the partners' accounts. The partnership shall make a distribution to a partner in an amount equal to any excess of the credits over the charges in the partner's account. A partner shall contribute to the partnership an amount equal to any excess of the charges over the credits in the partner's account.

(3) If a partner fails to contribute, all other partners shall contribute, in the proportions in which those partners share partnership losses, the additional amount necessary to satisfy the partnership obligations. A partner or partner's legal representative may recover from the other partners any contributions the partner makes to the extent the amount contributed exceeds that partner's share of the partnership obligations.

(4) After the settlement of accounts, each partner shall contribute, in the proportion in which the partner shares partnership losses, the amount necessary to satisfy partnership

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obligations that were not known at the time of the settlement.

(5) The estate of a deceased partner is liable for the partner's obligation to contribute to the partnership.

(6) An assignee for the benefit of creditors of a partnership or a partner, or a person appointed by a court to represent creditors of a partnership or a partner, may enforce a partner's obligation to contribute to the partnership.

SECTION 40. IC 23-4-1-68 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 68. As used in this section through section 75 of this chapter, the following terms have the following meanings:

(a) "General partner" means a partner in a partnership and a general partner in a limited partnership.

(b) "Limited partner" means a limited partner in a limited partnership.

(c) "Limited partnership" means a limited partnership created under this chapter, predecessor law, or comparable law of another jurisdiction.

(d) "Partner" includes both a general partner and a limited partner.

SECTION 41. IC 23-4-1-69 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 69. (1) A partnership may be converted to a limited partnership under this section.

(2) The terms and conditions of a conversion of a partnership to a limited partnership must be approved by all the partners or by a number or percentage specified for conversion in the partnership agreement.

(3) After the conversion is approved by the partners, the partnership shall file a certificate of limited partnership in the jurisdiction in which the limited partnership is to be formed. The certificate must include:

(a) a statement that the partnership was converted to a limited partnership from a partnership;

(b) its former name; and

(c) a statement of the number of votes cast by the partners for and against the conversion and, if the vote is less than unanimous, the number or percentage required to approve the conversion under the partnership agreement.

(4) The conversion takes effect when the certificate of limited partnership is filed or at any later date specified in the certificate.

(5) A general partner who becomes a limited partner as a result

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of the conversion remains liable as a general partner for an obligation incurred by the partnership before the conversion takes effect. If the other party to a transaction with the limited partnership reasonably believes when entering the transaction that the limited partner is a general partner, the limited partner is liable for an obligation incurred by the limited partnership within ninety (90) days after the conversion takes effect. The limited partner's liability for all other obligations of the limited partnership incurred after the conversion takes effect is that of a limited partner as provided under sections 44 through 52 of this chapter.

SECTION 42. IC 23-4-1-70 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 70. (1) A limited partnership may be converted to a partnership under this section.**

(2) Except as provided otherwise in a limited partnership agreement, the terms and conditions of a conversion of a limited partnership to a partnership must be approved by all the partners.

(3) After the conversion is approved by the partners, the limited partnership shall cancel its certificate of limited partnership.

(4) The conversion takes effect when the certificate of limited partnership is canceled.

(5) A limited partner who becomes a general partner as a result of the conversion remains liable only as a limited partner for an obligation incurred by the limited partnership before the conversion takes effect. The partner is liable as a general partner for an obligation of the partnership incurred after the conversion takes effect.

SECTION 43. IC 23-4-1-71 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 71. (1) A partnership or limited partnership that has been converted under this chapter is for all purposes the same entity that existed before the conversion.**

(2) When a conversion takes effect:

(a) all property owned by the converting partnership or limited partnership remains vested in the converted entity;

(b) all obligations of the converting partnership or limited partnership continue as obligations of the converted entity; and

(c) an action or proceeding pending against the converting partnership or limited partnership may be continued as if the conversion had not occurred.

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SECTION 44. IC 23-4-1-72 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 72. (1) Under a plan of merger approved as provided in subsection (3), a partnership may be merged with one (1) or more partnerships or limited partnerships.**

(2) The plan of merger must set forth the following:

(a) The name of each partnership or limited partnership that is a party to the merger.

(b) The name of the surviving entity into which the other partnerships or limited partnerships will merge.

(c) Whether the surviving entity is a partnership or a limited partnership and the status of each partner.

(d) The terms and conditions of the merger.

(e) The manner and basis of converting the interests of each party to the merger into interests or obligations of the surviving entity or into money or other property in whole or part.

(f) The street address of the surviving entity's chief executive office.

(3) The plan of merger must be approved:

(a) in the case of a partnership that is a party to the merger, by all of the partners, or a number or percentage specified for merger in the partnership agreement; and

(b) in the case of a limited partnership that is a party to the merger, by the vote required for approval of a merger by the law of the state or foreign jurisdiction in which the limited partnership is organized and, in the absence of such a specifically applicable law, by all the partners, notwithstanding a provision to the contrary in the partnership agreement.

(4) After a plan of merger is approved and before the merger takes effect, the plan may be amended or abandoned as provided in the plan.

(5) The merger takes effect on the latest of:

(a) the approval of the plan of merger by all parties to the merger, as provided in subsection (3);

(b) the filing of all documents required by law to be filed as a condition to the effectiveness of the merger; or

(c) any effective date specified in the plan of merger.

SECTION 45. IC 23-4-1-73 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 73. (1) When a merger takes effect:**

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(a) the separate existence of every partnership or limited partnership that is a party to the merger, other than the surviving entity, ceases;

(b) all property owned by each of the merged partnerships or limited partnerships vests in the surviving entity;

(c) all obligations of every partnership or limited partnership that is a party to the merger become the obligations of the surviving entity; and

(d) an action or proceeding pending against a partnership or limited partnership that is a party to the merger may be continued as if the merger had not occurred, or the surviving entity may be substituted as a party to the action or proceeding.

(2) The secretary of state is the agent for service of process in an action or proceeding against a surviving foreign partnership or limited partnership to enforce an obligation of a domestic partnership or limited partnership that is a party to a merger. The surviving entity shall promptly notify the secretary of state of the mailing address of its chief executive office and of any change of address. Upon receipt of process, the secretary of state shall mail a copy of the process to the surviving foreign partnership or limited partnership.

(3) A partner of the surviving partnership or limited partnership is liable for:

(a) all obligations of a party to the merger for which the partner was personally liable before the merger;

(b) all other obligations of the surviving entity incurred before the merger by a party to the merger, but those obligations may be satisfied only out of property of the entity; and

(c) all obligations of the surviving entity incurred after the merger takes effect, but those obligations may be satisfied only out of property of the entity if the partner is a limited partner.

(4) If the obligations incurred before the merger by a party to the merger are not satisfied out of the property of the surviving partnership or limited partnership, the general partners of that party immediately before the effective date of the merger shall contribute the amount necessary to satisfy that party's obligations to the surviving entity, in the manner provided in section 67 of this chapter or in the limited partnership act of the jurisdiction in which the party was formed, as the case may be, as if the merged party were dissolved.

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(5) A partner of a party to a merger who does not become a partner of the surviving partnership or limited partnership is dissociated from the entity, of which that partner was a partner, as of the date the merger takes effect. The surviving entity shall cause the partner's interest in the entity to be purchased under section 56 of this chapter or another statute specifically applicable to that partner's interest with respect to a merger. The surviving entity is bound under section 57 of this chapter by an act of a general partner dissociated under this subsection, and the partner is liable under section 58 of this chapter for transactions entered into by the surviving entity after the merger takes effect.

SECTION 46. IC 23-4-1-74 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 74. (1) After a merger, the surviving partnership or limited partnership may file a statement that one (1) or more partnerships or limited partnerships have merged into the surviving entity.

(2) A statement of merger must contain:

- (a) the name of each partnership or limited partnership that is a party to the merger;
- (b) the name of the surviving entity into which the other partnerships or limited partnership were merged;
- (c) the street address of the surviving entity's chief executive office and of an office in Indiana, if any; and
- (d) whether the surviving entity is a partnership or a limited partnership.

(3) Except as otherwise provided in subsection (4), for purposes of section 19.5 of this chapter, property of the surviving partnership or limited partnership that before the merger was held in the name of another party to the merger is property held in the name of the surviving entity upon filing a statement of merger.

(4) For purposes of section 10 of this chapter, real property of the surviving partnership or limited partnership that before the merger was held in the name of another party to the merger is property held in the name of the surviving entity upon recording a certified copy of the statement of merger in the office for recording transfers of that real property.

(5) A filed and, if appropriate, recorded statement of merger, executed and declared to be accurate under section 19.5(3) of this chapter, stating the name of a partnership or limited partnership that is a party to the merger in whose name property was held before the merger and the name of the surviving entity, but not

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1 containing all of the other information required by subsection (2),
 2 operates with respect to the partnerships or limited partnerships
 3 named to the extent provided in subsections (3) and (4).

4 SECTION 47. IC 23-4-1-75 IS ADDED TO THE INDIANA CODE
 5 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 6 1, 2004]: **Sec. 75. This chapter is not exclusive. Partnerships or
 7 limited partnerships may be converted or merged in any other
 8 manner provided by law.**

9 SECTION 48. THE FOLLOWING ARE REPEALED [EFFECTIVE
 10 JULY 1, 2004]: IC 23-4-1-20; IC 23-4-1-29; IC 23-4-1-30;
 11 IC 23-4-1-31; IC 23-4-1-32; IC 23-4-1-33; IC 23-4-1-34; IC 23-4-1-35;
 12 IC 23-4-1-36; IC 23-4-1-37; IC 23-4-1-38; IC 23-4-1-39; IC 23-4-1-40;
 13 IC 23-4-1-41; IC 23-4-1-42; IC 23-4-1-43; IC 23-4-1-53.

14 SECTION 49. [EFFECTIVE JULY 1, 2004] **(a) Before January 1,
 15 2005, IC 23-4-1, as amended by this act, governs only a partnership
 16 formed:**

17 **(1) after June 30, 2004; or**

18 **(2) before July 1, 2004, if the partnership elects, as provided
 19 by subsection (c), to be governed by this act.**

20 **(b) After December 31, 2004, IC 23-4-1, as amended by this act,
 21 governs all partnerships.**

22 **(c) Before January 1, 2005, a partnership voluntarily may elect,
 23 in the manner provided in its partnership agreement or by law for
 24 amending the partnership agreement, to be governed by IC 23-4-1,
 25 as amended by this act. The provisions of this act relating to the
 26 liability of the partnership's partners to third parties apply to limit
 27 those partners' liability to a third party who had done business
 28 with the partnership within one (1) year preceding the
 29 partnership's election to be governed by this act, only if the third
 30 party knows or has received a notification of the partnership's
 31 election to be governed by this act.**

32 SECTION 50. [EFFECTIVE JULY 1, 2004] **This act does not
 33 affect an action or proceeding commenced or a right accrued
 34 before July 1, 2004.**

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